

Syllabus.

VIRGINIAN RAILWAY CO. *v.* SYSTEM FEDERATION NO. 40, RAILWAY EMPLOYEES DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR, ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

No. 324. Argued February 8, 9, 1937.—Decided March 29, 1937.

1. Concurrent findings of fact, by district court and circuit court of appeals, are conclusive when not plainly erroneous. Pp. 542-545.
2. The amended Railway Labor Act seeks to avoid interruptions of interstate commerce resulting from disputes concerning pay, rules, or working conditions on the railroads, by the promotion of collective bargaining between the carrier and the authorized representative of its employees, and by mediation and arbitration when such bargaining does not result in agreement. To facilitate agreement, it gives to employees the right to organize and bargain collectively through a representative of their own selection, doing away with company interference and "company unions." Section 2, Ninth, makes it the duty of the National Mediation Board, when any dispute arises among a carrier's employees "as to who are the representatives of such employees," to investigate the dispute and to certify the name of the organization authorized to represent the employees; and it commands that "Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act." *Held:*

(1) That the duty to "treat" with the representative so certified is mandatory. P. 547.

(2) The statute does not undertake to compel agreement and does not preclude the employer from entering into individual contracts directly with individual employees, but it requires the employer to "treat with" the authorized representative of the employees, that is, to meet and confer with their representative, to listen to their complaints, and to make reasonable effort to compose differences. P. 548.

(3) The duty is to treat with the authorized representative exclusively. P. 548.

(4) This duty is enforceable by injunction. P. 549.

3. A court of equity may refuse to act when it cannot give effective relief; but whether a decree should be refused as useless is a matter of judgment addressed to the special circumstances of each case. P. 550.
4. In determining whether the duty of a carrier to treat with the authorized representative of its employees is enforceable by mandatory injunction, weight is attached to the judgment of Congress that conference between carriers and employees is a powerful aid to industrial peace; and it will not be assumed that such negotiation will not result in agreement or lead to successful mediation or arbitration. P. 551.
5. The peaceable settlement of labor controversies that may seriously impair the ability of an interstate carrier to perform its service to the public, is a matter of public concern. P. 552.
6. Courts of equity go much farther in furtherance of the public interest than when only private interests are involved. P. 552.
7. The fact that, by the Railway Labor Act, Congress has indicated its purpose to make negotiation between carrier and employees obligatory in case of industrial controversy, is in itself a declaration of public interest and policy. P. 552.
8. The power of Congress over interstate commerce extends to such regulations of the relations of rail carriers to their employees as are reasonably calculated to prevent the interruption of interstate commerce by strikes and their attendant disorders. P. 553.
9. It was for Congress to choose the means by which its objective of securing the uninterrupted service of interstate railroads was to be secured, and its judgment, expressed in the Railway Labor Act and confirmed by the history of industrial disputes and of railroad labor relations, is not open to review here. P. 553.
10. The activities of "back shop" employees engaged on heavy repairs on locomotives and cars withdrawn from service for long periods, are *held* to bear such relation to the interstate activities of the carrier as to be regarded as part of them—(*Employers' Liability Cases*, 207 U. S. 463, distinguished)—all subject to the power of Congress over interstate commerce. P. 554.
11. Although the carrier in this case might have turned over its back shop repair work to independent contractors, its determination to make its own repairs, and the nature of the work done, brought its relations with the back shop employees within the purview of the Railway Labor Act. P. 557.
12. The provisions of the Railway Labor Act prohibiting company unions and imposing on the railway the duty of "treating with"

- the authorized representative of its employees for the purpose of negotiating a labor dispute, do not infringe the rights of the carrier under the due process clause of the Fifth Amendment. P. 557.
13. In this regard, the Railway could complain only of infringement of its own constitutional immunity, not that of the employees. P. 558.
14. Under § 2, Fourth, of the Railway Labor Act, at an election participated in by a majority of the employees entitled to vote, the vote of a majority of the participants determines the choice of representative. P. 559.
15. A certificate of the National Mediation Board, certifying, in conformity with the Railway Labor Act, that as the result of an election a specified union has been designated to represent a craft of employees, and showing on its face the total number of votes cast in favor of each candidate, is not void because it fails to state the total number of eligible voters in the craft, but is *prima facie* sufficient, and the omitted fact is open to inquiry by the court asked to enforce the command of the statute, § 2, Ninth. P. 561.
16. Section 9 of the Act of March 23, 1932, c. 90, 47 Stat. 70, which provides that "every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in . . . findings of fact made and filed by the court," is not inconsistent with the mandatory injunction in this case. P. 562.
17. Specific provisions of a later Act cannot be rendered nugatory by more general provisions of an earlier Act. P. 563.
- 84 F. (2d) 641, affirmed. D. C., 11 F. Supp. 621.

CERTIORARI, 299 U. S. 529, to review the affirmance of a decree rendered by the District Court against the Railway Company in a suit by the Federation. The decree commanded the Company to treat with the Federation as the duly accredited representative of the Company's shop craft employees, in respect of pay, working conditions, etc., and restrained the Company from interfering with, influencing, or coercing such employees in their free choice of their representatives, etc.

*Mr. James Piper* opened, and *Mr. H. T. Hall* concluded, the argument for petitioner. *Messrs. W. H. T. Loyall* and *John C. Donnelly* were also on the petitioner's brief from which the following summary is taken.

Section 2, Ninth, of the Act was not meant to impose a legally enforceable obligation to negotiate. In requiring the Railway to "exert every reasonable effort to make and maintain agreements," etc., the decree uses the very words of § 2, First, of the Railway Labor Act of 1926, which was continued by the 1934 amendments without change. The court below held "treat with" in § 2, Ninth, to mean "negotiate with," and presumably this portion of the decree was upheld as a definition of the negotiations the Railway was required to undertake. But in *Malone v. Gardner*, 62 F. (2d) 15, 18-20, the same court held § 2, First, of the Act to be a general admonition or declaration of duty imposing no enforceable obligation, citing *Texas & N. O. R. Co. v. Railway Clerks*, 281 U. S. 548, and *Pennsylvania Railroad System v. Pennsylvania R. Co.*, 267 U. S. 203. The two decisions of the court below are irreconcilable. It rests the authority to award such a mandatory injunction, not upon any change in § 2, First, but solely upon the addition to the Act of the provision in § 2, Ninth, requiring carriers to "treat with" representatives certified, etc. In other words, it holds, in effect, that an admittedly unenforceable duty "to exert every reasonable effort to make and maintain agreements" has been transformed into a legally enforceable one by the mere addition to the statute of this requirement to "treat with" representatives. It seems to have felt that a direction to negotiate for specified purposes (§ 2, First), legally unenforceable, was made legally enforceable by the addition to the statute of (what it construed to be) a direction to "negotiate" for any of the purposes of the Act (§ 2, Ninth).

Congress did not intend to make any such change in the law, and did not use "treat with" in the sense of "nego-

tiate with," but in its very usual sense of "act towards" or "regard." The duty is to treat with the certified representative "as the representative of the craft or class." If Congress had used "treat with" in the sense of "negotiate with" it would not have included this quoted phrase.

The essential characteristic of the Railway Labor Act of 1926 was that it provided a voluntary scheme for the adjustment of the relations between carriers and their employees. *Texas & N. O. R. Co. v. Railway Clerks*, 281 U. S. 548, 569. The purpose of Congress in adding § 2, Ninth, is apparent from the report of the Committee of the House accompanying H. R. 9861, the bill which enacted the 1934 amendments to the Railway Labor Act. Section 2, Ninth, was to provide machinery for determining the representative of employees in cases of disputes between them on that subject.

The requirement that the carrier shall "treat" means only that, after such a dispute and a certification by the Board, if the carrier desires to deal with a representative of the craft or class involved, it must treat with the person or organization found by the Board to be the authorized representative, as the authorized representative, and not with someone else. It does not mean that as a consequence of a dispute and certification (but not otherwise) the carrier is under a legally enforceable obligation to negotiate with a representative of its employees. To so hold is not only to ignore the "voluntary scheme" of the Act which the Chief Justice in the *Texas & N. O. R. Co.* case said was its "essence," but to impute to Congress the unlikely intention of creating a duty on the part of the carrier to negotiate with a representative of its employees enforceable when, but only when, its employees have had a dispute as to who that representative shall be.

Even if Congress used the phrase "treat with" in the sense of "negotiate with," it is obvious that it did not intend thereby to create a legally enforceable obligation to negotiate.

A duty to negotiate is an imperfect obligation beyond the power of courts of equity to enforce. *Texas & N. O. R. Co. v. Railway Clerks*, 281 U. S. 548, 568.

Negotiation depends upon the feelings, desires and mental attitude of those negotiating, and these are completely beyond judicial control. In order to negotiate in good faith, one must have the desire and the will to negotiate, and this implies the existence of a desire to make an agreement upon the best terms possible, and to make counter proposals if necessary, and do everything else that constitutes bargaining. It is easy to imagine demands, made upon a carrier by its employees, so unreasonable that the carrier could not for an instant consider acceding thereto to any extent whatsoever. May the carrier, nevertheless, negotiate without any good faith intention of acceding to such demands to any extent? The answer must be in the negative—one cannot be said, for example, to negotiate for the purchase of a house if he have a settled determination never to buy a house on any terms. See Story, J., in *Tobey v. Bristol*, Fed. Cas. No. 14,065, at p. 1321; Pomeroy's Eq. Juris., 4th ed., § 2180.

If § 2, Ninth, of the Railway Labor Act, requires the Railway to negotiate with the Federation, it is unconstitutional in that it deprives the Railway of its liberty and property in violation of the due process clause. The mandatory injunction directing the Railway to negotiate with the representative certified by the Mediation Board and exert every reasonable effort to make and maintain agreements and to settle disputes, is a violation of the due process clause of the Fifth Amendment.

This Court has long held that the freedom of employers and employees to deal with each other on equal and voluntary terms, is protected by the due process clause of the Fifth and Fourteenth Amendments. *Lochner v. New York*, 198 U. S. 45, 53; *Adair v. United States*, 208 U. S. 161, 173; *Hitchman Coal Co. v. Mitchell*, 245 U. S.

229, 250; *Morehead v. Tipaldo*, 298 U. S. 587. The liberty to refrain from entering into contracts is a part of liberty of contract; legislation which compels the making of agreements is a violation of fundamental rights and is void. *Coppage v. Kansas*, 236 U. S. 1, 20. Liberty of contract as a right is, of course, not absolute, but qualified. *Nebbia v. New York*, 291 U. S. 502, 523. But "Legislative abridgment of that freedom can only be justified by the existence of exceptional circumstances. Freedom of contract is the general rule and restraint the exception." *Morehead v. Tipaldo*, *supra*.

There are here no "exceptional circumstances," no imminent "disaster," (*Wilson v. New*, 243 U. S. 332, 342), no unusual "danger" (*Holden v. Hardy*, 169 U. S. 366, 393), no "desperate" situation (*Nebbia v. New York*, 291 U. S. 502, 515), no element of "deception" (*Hall v. Geiger-Jones Co.*, 242 U. S. 539, 551). The Railway Labor Act is permanent legislation. Its validity has been sustained only as a "voluntary scheme" involving no invasion of contract relationships. *Texas & N. O. R. Co. v. Railway Clerks*, *supra*. See also *Pennsylvania R. Co. v. U. S. Railroad Labor Board*, 261 U. S. 72; *Pennsylvania Railroad System v. Pennsylvania R. Co.*, 267 U. S. 203.

As now construed by the Court below, the Act has now lost that voluntary character, which this Court declared to be its "essence" and has become a system of compulsion against the employer; yet no similar compulsion is imposed upon the employees.

Negotiation with respect to the terms of the contract is a part of the contractual process; and since the employer cannot be compelled to take the ultimate step (*Coppage v. Kansas*, *supra*), it is plain that he cannot be compelled to take the initial steps. As viewed by the Fifth Amendment, the contractual process is a single one; all of its elements enjoy the same protection. *Adair v.*

*United States*, 208 U. S. 161, 173, in *Cooley on Torts*; 3 Willoughby, Const., 2d ed., 1802; *Allgeyer v. Louisiana*, 165 U. S. 578, 589.

The doctrine that liberty of contract includes liberty to refuse to have business relations to any extent has been exemplified in the cases upholding the right of every man to deal with, or refuse to deal with, any man, or class of men, as he sees fit, whatever his motive or whatever the resulting injury, without being held in any way accountable (*Federal Trade Comm'n v. Raymond Brothers-Clark Co.*, 263 U. S. 565; *United States v. Colgate & Co.*, 250 U. S. 300; *Grenada Lumber Co. v. Mississippi*, 217 U. S. 433; *Great A. & P. Tea Co. v. Cream of Wheat Co.*, 227 Fed. 46), and in the decisions against schemes of compulsory arbitration (*Wolff Packing Co. v. Industrial Court*, 267 U. S. 552, 569; *Dorchy v. Kansas*, 264 U. S. 286).

Further, in construing the Transportation Act, 1920, this Court has twice strongly intimated that legislation establishing compulsory negotiation would violate the Fifth Amendment. *Pennsylvania R. Co. v. Railroad Labor Board*, 261 U. S. 72, 84, 85; *Pennsylvania Railroad System v. Pennsylvania R. Co.*, 267 U. S. 203, 217. See *Sherman v. Abeles*, 265 N. Y. 383; *Holcombe v. Creamer*, 231 Mass. 99, 109.

The abridgment of liberty of contract here attempted is arbitrary and unreasonable,—beyond the limits of effective federal statutory control,—beyond the powers of a court of equity. The direction to “treat with,” if it means “negotiate with,” is utterly futile. The direction to negotiate is also futile since the ultimate result of any conference is admittedly without the scope of control.

The injunction restraining the Railway from contracting with anyone except the Federation is a violation of the due process clause of the Fifth Amendment. The carrier is deprived of the right to bargain or contract with



those of its employees who do not desire such representation; and this is so whether the carrier desires to contract directly with an individual in the minority or indirectly through an organization by which the minority desires to be represented. If the Act empowers the majority to speak for the minority, it in effect delegates to the majority the right to prevent the carrier from making a contract with the minority which the minority may be willing to make. A somewhat similar delegation to the majority of power to bind the minority was recently condemned by this Court in *Carter v. Carter Coal Co.*, 298 U. S. 238.

The Act is unconstitutional in its entirety in that it attempts to regulate labor relations between carriers and employees engaged solely in activities intrastate in character which do not directly affect interstate commerce.

The back-shop employees are engaged solely in intrastate activities, as was found by both of the lower courts. Their work is not so related to the interstate activities of the Railway as to admit of federal regulation of the employer-employee relationship. *First Employers' Liability Cases*, 207 U. S. 463, 498; *New York, N. H. & H. R. Co. v. Bezie*, 284 U. S. 415. See also *Industrial Accident Comm'n v. Davis*, 259 U. S. 182; *Minneapolis & St. Louis R. Co. v. Winters*, 242 U. S. 353.

Furthermore, the work of the back-shop employees at the railway's shop is manufacture, which is not commerce. *Crescent Cotton Oil Co. v. Mississippi*, 257 U. S. 129; *Carter v. Carter Coal Co.*, 298 U. S. 238.

The proposition that back-shop employees are subject to federal regulation because in the event of a strike by such workers the interstate activities of the Railway may be interfered with is untenable. According to that test or standard, all activities, no matter how local, would be held to directly burden or affect interstate commerce inasmuch as any interruption of them by strikes to some extent would affect the stream of interstate commerce.

The back-shop work is just as local as similar work done by outside concerns, which clearly could not be subjected to federal regulation on the ground of possible strike disturbance. *Carter case, supra*.

The strike test is also untenable because, as is manifest from the testimony, the Railway could permanently close its shop tomorrow without occasioning any interruption to its interstate service. All the work done in the shop could be handled by outside shops and the material made at the shop could be purchased in the market. Distinguishing: *United States v. Railway Employees' Department*, 283 Fed. 479; *id.*, 290 Fed. 978.

As an attempted regulation of intrastate activities, the Act is inseparable; it cannot be aided by construction. *United States v. Reese*, 92 U. S. 214; *Trade-Mark Cases*, 100 U. S. 82; *James v. Bowman*, 190 U. S. 127; *Illinois Central R. Co. v. McKendree*, 203 U. S. 514; *Employers' Liability Cases, supra*; *Crowell v. Benson*, 285 U. S. 22, 76-77 (dissenting opinion).

Nor does the separability provision save the Act or any part of it. *Hill v. Wallace*, 259 U. S. 44, 70; *Railroad Retirement Board v. Alton R. Co.*, 295 U. S. 330, 361.

The certification of the Mediation Board is a nullity (a) because it fails to show that a majority of any craft or class of employees voted in favor of the Federation, or even that such a majority participated in the election; and (b) because it is impossible to tell from it what the result of the election would have been without the votes of the back-shop employees.

The injunction is contrary to the Norris-LaGuardia Act.

*Mr. Frank L. Mulholland*, with whom *Messrs. S. M. Brandt* and *Willard H. McEwen* were on the brief, for respondents.

The historical development of the Railway Labor Act, as amended in 1934, indicates the intent to impose an

enforceable legal obligation upon carriers to treat with the true representative of any craft or class of their employees certified as such by the National Mediation Board. The Act was amended to remedy an existing evil. Carriers were avoiding any treating with the true representatives of employees, through the subterfuge of fomenting and keeping in existence a representation dispute between a company union and the standard labor organization which the employees desired. In so far as the evidence presented to the congressional committee demonstrated, no carrier was then refusing to treat with the true representatives of employees save under the cloak of a claimed representation dispute. Thus if it be true that Congress did not include in the Act any compulsory provisions requiring carriers to "treat" where no such dispute existed, no conclusion can be drawn from that fact as to its intention with regard to the enforceability of such an obligation in situations where a dispute did exist.

Statutes must be construed in relation to the evils which they were designed to cure. *Warner v. Goltra*, 293 U. S. 155.

But the Act does impose compulsory obligations upon carriers to "treat" in some measure with the representatives of their employees whether a representation dispute exists or not. Petitioner's argument in this connection rests solely on the provisions of paragraphs First and Second of § 2 of the Act. These are copied substantially from the Railway Labor Act of 1926, which in turn took them from § 301 of the Transportation Act of 1920. As a part of the 1920 Act this language did not impose an enforceable obligation. As adopted into the Railway Labor Act of 1926, it was also held unenforceable in the case of *Malone v. Gardner*, 62 F. (2d) 15. The petitioner asserts that this language as used in the Act of 1934 provides an unenforceable obligation under the familiar

"copied statute" rule of interpretation. That language which creates an unenforceable obligation when a part of a generally unenforceable statute retains its character when it becomes a part of an enforceable Act is not an inevitable conclusion. But, regardless of the enforceability of the provisions of § 2, First and Second, there are other provisions of this amended statute which do create enforceable obligations upon all carriers to treat or confer with the representatives of their employees under certain circumstances.

Section 2, Ninth, requires carriers to "treat" with the representatives of their employees "for the purposes of this Act," which must refer to the settlement of disputes between carriers and employees. Two types of disputes are contemplated, those involving the making or changing of agreements concerning rules, rates of pay, or working conditions, and those involving local grievances or disputes concerning the interpretation or application of agreements already made.

The system set up by the statute for all carriers regardless of whether a representation dispute exists or not, contemplates a measure of compulsion in the matter of treating with representatives of employees in the settlement of both types of differences.

The provisions of § 6 of the Act relating to conferences between the parties are certainly enforceable. To this extent unquestionably Congress has imposed a legal obligation upon all carriers to "treat" with employee representatives.

The other type of case, *i. e.*, arising out of grievances or out of the interpretation or application of agreements, is to be handled in a different manner. The parties, however, are again commanded to confer with regard to the matter. If conferences fail, then the dispute may be referred to the National Railroad Adjustment Board for determination.

Either method of procedure as outlined by the statute results ultimately in the parties coming under definite legal obligations. Decisions of the National Railroad Adjustment Board may be enforced by definitely outlined procedure. Acts of the National Mediation Board are not thus enforceable, but a taking of jurisdiction by that Board places the parties under a certain legal duty to maintain the *status quo* until its functions have been performed.

Where the ultimate end of the statutory process is the undoubted creation of enforceable obligations, general statements of duty are given color by the proceedings to which they are related. Accordingly, there is specifically imposed upon all carriers an obligation to confer or treat with employee representatives "for the purposes of this Act," *i. e.*, the adjustment of disputes between them.

The obligation to "treat" imposed by § 2, Ninth, is sufficiently definite to be capable of enforcement by injunction.

Courts are frequently called upon to pass upon the good faith of a party and to estimate his state of mind by his acts. That bad faith may be successfully concealed has never been accepted as a valid reason why courts should be barred from inquiring into the facts and from seeking to enforce the law. The difficulty, if any, is one of proof and not of equity jurisdiction.

It must be kept in mind that the carrier was not only ordered to treat with the Federation as the representative of the employees in question, but as a necessary corollary was also ordered not to treat with any other person or organization claiming to be such representative. Not only is the negative phase of this decree definitely enforceable, but it also assists in the enforcement of the positive phase. This assistance grows out of the economic relations of the parties. In dealing with nu-

merous employees scattered over the many miles of territory through which a railroad system extends, it has been considered necessary by carriers that they negotiate general agreements defining the rights of whole classes or crafts of employees as units. If the carrier is prevented from treating with regard to the negotiation of such agreements with other parties, its own economic self-interest dictates that it treat for that purpose with the certified representative of the employees, and in good faith.

Section 2, Ninth, of the Railway Labor Act, as above interpreted, does not violate the Fifth Amendment. *Duncan v. Missouri*, 152 U. S. 377; *Wagner v. Leser*, 239 U. S. 207; *Chicago, R. I. & P. R. Co. v. United States*, 284 U. S. 79.

If the statute has a "reasonable relation to a proper use" (*Liberty Warehouse Co. v. Burley Tobacco Assn.*, 276 U. S. 71); is "reasonably necessary to effect any of the great purposes for which the National Government was created" (*Highland v. Russell Car Co.*, 279 U. S. 253); and is not "inappropriate" to remedy "the evil aimed at" (*Packer Corp. v. Utah*, 285 U. S. 104), the statute must be held valid whether contracts or contract rights are affected or not.

Congress, in the exercise of its legislative discretion, deemed it necessary to the successful functioning of its plan to define the nature of the employees' groups through which the contemplated bargaining was to be carried on. In selecting the "craft or class of employees" as such group, Congress was making no arbitrary determination. It was merely recognizing bargaining groups which were already in existence and functioning as such on virtually all of the Nation's carriers.

It is further apparent that the craft or class, like any other group of individuals, can act collectively only

through representatives selected by it. The next step logically, therefore, was for Congress to establish the means by which such representatives should be chosen. It was not only logical, but necessary, in order to perfect the existing system, that Congress establish a method of choosing the necessary representatives.

The Act does not require a carrier to enter into any contract, but merely that it shall negotiate with regard to the matter. The claimed right of freedom to abstain from negotiations is one whose existence or non-existence can have no legal or practical effect upon the rights of the petitioner. The purpose of the Fifth Amendment was to provide a protection for valuable individual rights. Until valuable rights are infringed, protection of the Amendment cannot be invoked.

The claim that the carrier must be free to treat with any representatives of any group of employees it chooses means that the carrier, not the Congress, should have the power to determine the nature of the collective bargaining group of employees, and should be able to deal with groups smaller in size than the craft or class, *i. e.*, disgruntled or favored minorities within the craft or class. As a practical matter, this asserted right is one of mere academic value to the petitioner, except as it may be used for the purpose of avoiding or breaking down the regulatory scheme exemplified by the Railway Labor Act, a result which would certainly follow its successful assertion.

By virtue of the practice long recognized in the railroad industry, labor agreements so negotiated by an accredited representative selected by the majority of the class or craft, have been made applicable to all the employees constituting the class or craft. Any departure from this arrangement in the nature of another agreement applicable only to the individuals constituting a

minority group would inevitably become subversive of the agreement made by the representative of the majority group.

The labor agreements covering rates of pay, rules and working conditions, with which the Railway Labor Act is concerned, are to be distinguished from the individual contracts of employment with each employee. They are the general rules and regulations promulgated by the employer for the government of all employees of a particular class; but instead of the employer arbitrarily issuing such rules without consulting the employees, they are formulated in joint conferences and adopted by mutual agreement.

From a simple railroad operating standpoint, it would be quite impracticable for two groups, majority and minority of the same class or craft of employees, jointly constituting one operating or service organization, to function efficiently under two divergent sets of labor rules.

Still other complications would arise. More than one agreement applying to the same class or craft of employees would make it necessary at the outset to identify the very individuals to whom the terms of each agreement applied. Thus the individuals constituting the majority group and those constituting the minority group would have to be listed for payroll and other accounting needs. The accounting complications arising in themselves would be expensive. The majority and minority employees would become known, with the result, considering the controversial nature of the situation as a whole, that all kinds of disturbances growing out of proselyting and favoritism would ensue to impair the morale of the labor forces.

Under what conditions is the employee to work who elects neither the standards of the majority nor the



minority group? May he make still another agreement? If so, where is the process to end? Such is the situation which the Railway Labor Act and prior railway labor legislation sought to correct.

Collective bargaining has been recognized by this Court as legitimate and salutary. Its fostering and protection of the Nation's carriers as a means of settling disputes between them and their employees has been recognized as a legitimate congressional function. *Texas & N. O. R. Co. v. Railway Clerks*, 281 U. S. 548.

The petitioner is a common carrier, a public utility, the operator of a business peculiarly charged with the public interest. Its business may, therefore, be regulated to a greater extent than is the case with other industries without infringing upon the constitutional guarantee of freedom of contract. *Wilson v. New*, 243 U. S. 332.

In many respects, the private rights of carriers to enter into contracts have been subjected to unique restrictions conforming to the importance of the services which they perform for the public and the liability of the public to harm if that service is not constantly and justly rendered, all without violation of the Fifth Amendment. That the public is vitally concerned in labor disputes involving carriers and employees is obvious. The Railway Labor Act is designed to safeguard this public interest.

Distinguishing: *Carter v. Carter Coal Co.*, 298 U. S. 238. The decision in the *Carter* case is not binding upon the Court in this one because of the vast and fundamental differences between the statutes involved, both as to subject matter and as to their legal consequences.

The Railway Labor Act is a valid exercise of the interstate commerce power.

The consideration of whether a person or thing is directly engaged in or being used in interstate commerce affords at best a sort of rule of thumb method of deter-

mining whether he or it comes within the scope of federal regulatory power. If so engaged or used, federal authority may doubtless be applied. If not, the opposite conclusion does not follow. The authority of Congress is not governed by the employment of people or things in interstate commerce, but by the effects upon that commerce of the acts or practices sought to be regulated. Indeed, the authority of Congress has been held to extend to at least two classes of cases where purely intrastate matters are or may be involved. First, the Federal Government may exercise its power to prevent direct injury or interruption to the flow of interstate commerce whatever may be the source of that injury or interruption. Second, where the operations of a carrier are such that its interstate and intrastate activities are so inextricably commingled that they cannot be separated for the purposes of regulation, the power of Congress has been held to extend to both.

As for interruptions to interstate commerce, the disastrous results of strikes on interstate railroads is a matter of common knowledge.

If the Government of the United States has the power to prevent such interruptions to commerce by injunction after the interruption has begun, it has equal power to eliminate the source of the interruption before it occurs.

Reasoning from past experiences, the Congress concluded that the interruptions which it sought to prevent might arise as easily from disputes involving shop employees as from any other class. Nice distinctions between employees engaged in interstate commerce and those not so engaged, or between back-shop employees and others, were not attempted, for the reason that no such distinctions have ever been apparent in the results of the disputes involving these various groups. Whatever the group, the ultimate result of a serious dispute between a carrier and its employees has been the same—

interruption to interstate commerce, direct and disastrous. Accordingly, Congress sought to apply the procedure set up in the statute to all classes of carriers' employees defined as such by the rulings of the Interstate Commerce Commission. In so doing, Congress was applying no novel constitutional theory, but was treading a path well marked by the decisions of this Court. *Southern Ry. Co. v. United States*, 222 U. S. 20; *Texas & Pacific R. Co. v. Rigsby*, 241 U. S. 33; *Second Employers' Liability Cases*, 223 U. S. 1; *Baltimore & Ohio R. Co. v. Interstate Commerce Comm'n*, 221 U. S. 612; *Wilson v. New*, 243 U. S. 332; *New England Divisions Case*, 261 U. S. 184; *Dayton-Goose Creek Ry. v. United States*, 263 U. S. 456.

The difficulty experienced by the courts in determining whether a single employee is engaged in interstate commerce at a single moment of time (in applying the Second Federal Employers' Liability Act) is attested by the vast number of cases on the point. The decisions, both state and federal, are hopelessly contradictory, and many situations have been presented to this Court for final adjudication. The confusion which would follow any attempt to separate employees for the purpose of regulation of labor relations with their employing carriers would be so great as to render any such plan unworkable. Here we would have involved not a single employee, nor a single moment of time, as in a personal injury case, but numbers of employees and long courses of relationships between them and their employer extending over many years. Consider two groups of employees of the same carrier performing similar tasks, *e. g.*, those performed by machinists, the one group making running repairs, the other working in the back shop, the one therefore working in interstate commerce, the other not. Both groups belong to the same craft, usually both belong to the same labor organization. Their common interests are virtually

identical. Labor unrest may easily spread from one to the other. No practical distinction is maintained between them in the operation of a railroad. Neither group is static. A given employee may be in one category to-day and the other tomorrow, or in any one day he may perform tasks appertaining to both. All this is strikingly illustrated by the situation now existing on the Virginian Railroad.

That this carrier has attempted no such division in practice as it says exists between back-shop employees and others, in regulating its own business affairs, is the best evidence that such a division is entirely impracticable.

In *Schechter Poultry Corp. v. United States*, *supra*, and *Carter v. Carter Coal Co.*, *supra*, this Court was careful to distinguish between the production of such goods as would ultimately be transported in interstate commerce, the handling of those goods after commerce had ceased, and the commercial process itself. Labor disputes in businesses whose function is production or distribution, though they might be effective to prevent the goods in question from entering interstate commerce, and by inference though they might so clog the machinery of distribution as to ultimately dam up the commercial stream, were considered by the Court as affecting interstate commerce only indirectly. Those cases establish no rule of law exempting the field of labor relations as such from the scope of federal regulation. They merely define commerce and point out those acts which may be said to directly affect it. The doctrine expressed in *Texas & N. O. R. Co. v. Railway Clerks* has not been disturbed or modified by these later decisions.

The certification of the National Mediation Board is valid.

The Norris-LaGuardia Act is not applicable.

*Solicitor General Reed*, with whom *Attorney General Cummings* and *Messrs. Charles E. Wyzanski, Jr., Wendell*

*Berge, Leo F. Tierney, and Robert L. Stern* were on the brief, on behalf of the United States, as *amicus curiae*, by special leave of Court.

The Railway Labor Act may constitutionally be applied to cover persons employed in the back shops of a carrier even though such persons are not themselves engaged in interstate commerce. This Court has already upheld the validity of the Act as applied to clerks, whose work is obviously intrastate in nature. *Texas & N. O. R. Co. v. Railway Clerks*, 281 U. S. 548. The purpose of the Act was to prevent strikes which threatened the service of the necessary agencies of interstate transportation. Labor disputes between carriers and their shop employees would both endanger the safety of interstate transportation and directly obstruct its movement. Moreover, a dispute between a carrier and its back-shop employees would necessarily be communicated to employees engaged in interstate commerce, inasmuch as the mechanical department of a carrier, which includes both back-shop employees and those engaged in making running repairs, is operated and organized as a unit. The principle of the *Employers' Liability Cases*, 207 U. S. 463, does not apply here. Although interstate commerce might not be affected at all by the rule of liability applicable to shopmen's injuries, it would be directly obstructed if shopmen ceased to work and if railroad equipment was not repaired.

It is doubtful whether there are any railroad employees whose work is not essential to the effective functioning of the transportation system or as to whom it might not be said that labor disputes between them and their employers would interfere with interstate commerce. But if it be assumed that there is a small proportion of employees as to whom the Act could not constitutionally be applied, it is clear that Congress would have intended the Act to stand as to the remainder.

Petitioner does not challenge the enforceability or legality of subdivisions Third and Fourth of § 2, which together form one of the alternative statutory bases for the negative part of the decree, but claims that the affirmative duty imposed upon carriers to treat with the representatives of their employees is not enforceable. A review of the history and context of these sections, however, shows that Congress intended the obligations imposed by paragraphs First, Second, and Ninth of § 2, to be both mandatory and enforceable.

Enforcement of paragraphs First, Second, and Ninth of § 2 is in fact essential to the success of the statutory plan for amicable settlement of disputes through conferences between representatives of the parties. The purpose and effect of these provisions is to require carriers and their employees to use the machinery established by the Act for the attainment of industrial peace; it does not change the basic principles of the Act, which recognize that peace can be achieved only through conferences and voluntary agreements.

There is no inherent difficulty in the way of equitable enforcement of the statutory requirement that carriers confer with ~~the~~ representatives of their employees. The statute does not attempt to compel agreement, and the decree only requires the carrier to meet representatives of employees in conference.

The negative requirement in the decree that petitioner refrain from entering into collective labor agreements except with respondent may be regarded as one way in which a court of equity enforces the affirmative statutory obligation. Or it may rest upon the negative statutory obligations included in § 2, Second and Ninth. These paragraphs and complementary parts of the statute not only express an affirmative duty to treat with duly designated representatives of employees but also imply a negative duty not to treat with any one else as to rates

of pay, rules, or working conditions. Thus the negative part of the decree may be in execution of these paragraphs. Or it may be in execution of paragraphs Third and Fourth, which are unquestionably enforceable. *Texas & N. O. R. Co. v. Railway Clerks*, 281 U. S. 548.

The affirmative obligation does not deprive petitioner of liberty or property in violation of the Fifth Amendment; the obligation is merely to confer, not necessarily to contract. Moreover, if such a requirement were deemed to interfere with petitioner's property or contract rights, it would be reasonable as a necessary and important part of the machinery for the prevention of railway labor disputes. Every portion of the statutory plan ultimately depends for its success on the willingness of carriers to confer with the representatives of their employees.

The negative obligation does not in fact deprive carriers of liberty of contract, inasmuch as the practice of carriers is not to contract with individual employees or with minorities. It would be extremely impracticable for a carrier to have minority groups of employees working under different rules than the majority. The privilege of contracting with more than one representative of a single class of employees is purely theoretical.

In any event, the prohibition against contracts with minority groups is reasonable and necessary if railway labor disputes are to be prevented. The effectiveness of the machinery of the Act is posited upon agreement between representatives of employers and employees, and cannot be achieved by conflicting conferences between a carrier and numerous representatives of individual employees or minority groups working at cross purposes. Any attempt by a carrier to maintain two or more contracts applying to persons doing the same work, with standards necessarily discriminating against one group or another, would result in discord and dissatisfaction and make labor disputes inevitable.

The Railway Labor Act does not involve any delegation of legislative power. The doctrine of *Carter v. Carter Coal Co.*, 298 U. S. 238, is inapplicable.

Petitioner's claim that the injunction below violates §§ 4 (e), 6, 7 (a), and 9 of the Norris-LaGuardia Anti-Injunction Act is obviously unsupported by the language of the sections to which petitioner refers. Moreover, if there were an inconsistency, the Railway Labor Act, which was enacted after the Norris-LaGuardia Act and which deals with the specific problem at bar, would prevail.

MR. JUSTICE STONE delivered the opinion of the Court.

This case presents questions as to the constitutional validity of certain provisions of the Railway Labor Act of May 20, 1926, c. 347, 44 Stat. 577, as amended by the Act of June 21, 1934, c. 691, 48 Stat. 1185, 45 U. S. C. §§ 151-163, and as to the nature and extent of the relief which courts are authorized by the Act to give.

Respondents are System Federation No. 40, which will be referred to as the Federation, a labor organization affiliated with the American Federation of Labor and representing shop craft employees of petitioner railway, and certain individuals who are officers and members of the System Federation. They brought the present suit in equity in the District Court for Eastern Virginia, to compel petitioner, an interstate rail carrier, to recognize and treat with respondent Federation, as the duly accredited representative of the mechanical department employees of petitioner, and to restrain petitioner from in any way interfering with, influencing or coercing its shop craft employees in their free choice of representatives, for the purpose of contracting with petitioner with respect to rules, rates of pay and working conditions, and for the purpose of considering and settling disputes between petitioner and such employees.



The history of this controversy goes back to 1922, when, following the failure of a strike by petitioner's shop employees affiliated with the American Federation of Labor, other employees organized a local union known as the "Mechanical Department Association of the Virginian Railway." The Association thereupon entered into an agreement with petitioner, providing for rates of pay and working conditions, and for the settlement of disputes with respect to them, but no substantial grievances were ever presented to petitioner by the Association. It maintained its organization and held biennial elections of officers, but the notices of election were sent out by petitioner and all Association expenses were paid by petitioner.

In 1927 the American Federation of Labor formed a local organization, which, in 1934, demanded recognition by petitioner of its authority to represent the shop craft employees, and invoked the aid of the National Mediation Board, constituted under the Railway Labor Act as amended, to establish its authority. The Board, pursuant to agreement between the petitioner, the Federation, and the Association, and in conformity to the statute, held an election by petitioner's shop craft employees, to choose representatives for the purpose of collective bargaining with petitioner. As the result of the election, the Board certified that the Federation was the duly accredited representative of petitioner's employees in the six shop crafts.

Upon this and other evidence, not now necessary to be detailed, the trial court found that the Federation was the duly authorized representative of the mechanical department employees of petitioner, except the carmen and coach cleaners; that the petitioner, in violation of § 2 of the Railway Labor Act, had failed to treat with the Federation as the duly accredited representative of petitioner's employees; that petitioner had sought to influence its employees against any affiliation with labor organizations other than an association maintained by petitioner, and to

prevent its employees from exercising their right to choose their own representative; that for that purpose, following the certification by the National Mediation Board, of the Federation, as the duly authorized representative of petitioner's mechanical department employees, petitioner had organized the Independent Shop Craft Association of its shop craft employees, and had sought to induce its employees to join the independent association, and to put it forward as the authorized representative of petitioner's employees.<sup>1</sup>

Upon the basis of these findings the trial court gave its decree applicable to petitioner's mechanical department employees except the carmen and coach cleaners. It directed petitioner to "treat with" the Federation and to "exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, . . ." It restrained petitioner from "entering into any contract, undertaking or agreement of whatsoever kind concerning rules, rates of pay or working conditions affecting its Mechanical Department employees, . . . except . . . with

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<sup>1</sup>The court found that after the certification by the Mediation Board "the defendant, by and through its officers, agents and servants, undertook by means of the circulation of a petition or petitions addressed to the National Mediation Board to have the certification of the National Mediation Board aforesaid altered, changed or revoked so as to deprive its Mechanical Department employees of the right to representation by said System Federation No. 40, Railway Employees Department of the American Federation of Labor, so designated as aforesaid, and thereafter did cause to be organized the Independent Shop Crafts Association by individual Mechanical Department employees by circulating or causing to be circulated applications for membership in said Independent Shop Crafts Association notwithstanding the certification as aforesaid by the National Mediation Board of said System Federation No. 40, Railway Employees Department of the American Federation of Labor, as the authorized representative of its Mechanical Department employees, . . ."

the Federation," and from "interfering with, influencing or coercing" its employees with respect to their free choice of representatives "for the purpose of making and maintaining contracts" with petitioner "relating to rules, rates of pay, and working conditions or for the purpose of considering and deciding disputes between the Mechanical Department employees" and petitioner. The decree further restrained the petitioner from organizing or fostering any union of its mechanical department employees for the purpose of interfering with the Federation as the accredited representative of such employees. 11 F. Supp. 621.

On appeal the Court of Appeals for the Fourth Circuit approved and adopted the findings of the district court and affirmed its decree. 84 F. (2d) 641. This Court granted certiorari to review the cause as one of public importance.

Petitioner here, as below, makes two main contentions: First, with respect to the relief granted, it maintains that § 2, Ninth, of the Railway Labor Act, which provides that a carrier shall treat with those certified by the Mediation Board to be the representatives of a craft or class, imposes no legally enforceable obligation upon the carrier to negotiate with the representative so certified, and that in any case the statute imposes no obligation to treat or negotiate which can be appropriately enforced by a court of equity. Second, that § 2, Ninth, in so far as it attempts to regulate labor relations between petitioner and its "back shop" employees, is not a regulation of interstate commerce authorized by the commerce clause because, as it asserts, they are engaged solely in intrastate activities; and that so far as it imposes on the carrier any obligation to negotiate with a labor union authorized to represent its employees, and restrains it from making agreements with any other labor organization, it is a denial of due process guaranteed by the Fifth Amendment. Other minor objections to the decree, so far as relevant to

our decision, will be referred to later in the course of this opinion.

The concurrent findings of fact of the two courts below are not shown to be plainly erroneous or unsupported by evidence. We accordingly accept them as the conclusive basis for decision, *Texas & N. O. R. Co. v. Brotherhood of Railway & S. S. Clerks*, 281 U. S. 548, 558; *Pick Mfg. Co. v. General Motors Corp.*, 299 U. S. 3, 4, and address ourselves to the questions of law raised on the record.

*First. The Obligation Imposed by the Statute.* By Title III of the Transportation Act of February 28, 1920, c. 91, 41 Stat. 456, 469, Congress set up the Railroad Labor Board as a means for the peaceful settlement, by agreement or by arbitration, of labor controversies between interstate carriers and their employees. It sought "to encourage settlement without strikes, first by conference between the parties; failing that, by reference to adjustment boards of the parties' own choosing, and if this is ineffective, by a full hearing before a National Board . . ." *Pennsylvania R. Co. v. Railroad Labor Board*, 261 U. S. 72, 79. The decisions of the Board were supported by no legal sanctions. The disputants were not "in any way to be forced into compliance with the statute or with the judgments pronounced by the Labor Board, except through the effect of adverse public opinion." *Pennsylvania Federation v. Pennsylvania R. Co.*, 267 U. S. 203, 216.

In 1926 Congress, aware of the impotence of the Board, and of the fact that its authority was generally not recognized or respected by the railroads or their employees, made a fresh start toward the peaceful settlement of labor disputes affecting railroads, by the repeal of the 1920 Act and the adoption of the Railway Labor Act. Report, Senate Committee on Interstate Commerce, No. 222, 69th Cong., 1st Sess. *Texas & N. O. R. Co. v. Brotherhood of Railway & S. S. Clerks*, *supra*, 563. By the new measure Congress continued its policy of encouraging the amicable adjustment of labor disputes by their voluntary submis-

sion to arbitration before an impartial board, but it supported that policy by the imposition of legal obligations. It provided means for enforcing the award obtained by arbitration between the parties to labor disputes. § 9. In certain circumstances it prohibited any change in conditions, by the parties to an unadjusted labor dispute, for a period of thirty days, except by agreement. § 10. It recognized their right to designate representatives for the purposes of the Act "without interference, influence or coercion exercised by either party over the self-organization or designation of representatives by the other." § 2, Third. Under the last-mentioned provision this Court held, in the *Railway Clerks* case, *supra*, that employees were free to organize and to make choice of their representatives without the "coercive interference" and "pressure" of a company union organized and maintained by the employer; and that the statute protected the freedom of choice of representatives, which was an essential of the statutory scheme, with a legal sanction which it was the duty of courts to enforce by appropriate decree.

The prohibition against such interference was continued and made more explicit by the amendment of 1934.<sup>2</sup> Petitioner does not challenge that part of the

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<sup>2</sup> Section 2 of the Act, as amended in 1934, declares that its purposes, among others, are "(2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization" and "(3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act." The section was also amended to provide that "neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives," § 2, Third, and that "it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization . . . or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization." § 2, Fourth.

decree which enjoins any interference by it with the free choice of representatives by its employees, and the fostering, in the circumstances of this case, of the company union. That contention is not open to it in view of our decision in the *Railway Clerks* case, *supra*, and of the unambiguous language of § 2, Third, and Fourth, of the Act, as amended.

But petitioner insists that the statute affords no legal sanction for so much of the decree as directs petitioner to "treat with" respondent Federation "and exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes whether arising out of the application of such agreements or otherwise." It points out that the requirement for reasonable effort to reach an agreement is couched in the very words of § 2, First, which were taken from § 301 of the Transportation Act, and which were held to be without legal sanction in that Act. *Pennsylvania Federation v. Pennsylvania R. Co.*, *supra*, 215. It is argued that they cannot now be given greater force as reenacted in the Railway Labor Act of 1926, and continued in the 1934 amendment. But these words no longer stand alone and unaided by mandatory provision of the statute as they did when first enacted. The amendment of the Railway Labor Act added new provisions in § 2, Ninth, which makes it the duty of the Mediation Board, when any dispute arises among the carrier's employees, "as to who are the representatives of such employees," to investigate the dispute and to certify, as was done in this case, the name of the organization authorized to represent the employees. It commands that "Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act."

It is, we think, not open to doubt that Congress intended that this requirement be mandatory upon the railroad employer, and that its command, in a proper case, be enforced by the courts. The policy of the Transportation Act of encouraging voluntary adjustment of labor disputes, made manifest by those provisions of the Act which clearly contemplated the moral force of public opinion as affording its ultimate sanction, was, as we have seen, abandoned by the enactment of the Railway Labor Act. Neither the purposes of the later Act, as amended, nor its provisions when read, as they must be, in the light of our decision in the *Railway Clerks* case, *supra*, lend support to the contention that its enactments, which are mandatory in form and capable of enforcement by judicial process, were intended to be without legal sanction.<sup>3</sup>

Experience had shown, before the amendment of 1934, that when there was no dispute as to the organizations authorized to represent the employees, and when there was willingness of the employer to meet such representative for a discussion of their grievances, amicable adjustment of differences had generally followed and strikes had been avoided.<sup>4</sup> On the other hand, a prolific source of dispute had been the maintenance by the railroads of company unions and the denial by railway management

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<sup>3</sup> The 1934 amendment imposed various other obligations upon the carrier, to which criminal penalties were attached [§ 2, Tenth]—*e. g.*, prohibitions against helping unions, by contributions of funds, or assistance in the collection of dues, § 2, Fourth; against requiring employees to promise to join or not to join a labor union, § 2, Fifth; against changing rates of pay, etc., without specifying a conference upon thirty days' notice, § 2, Seventh; and see the requirement that the carrier post notices that all disputes will be determined in accordance with the Act, § 2, Eighth.

<sup>4</sup> In the first two years after the enactment of the Railway Labor Act of 1926, 363 cases concerning rates of pay, rules or working conditions were submitted to the United States Board of Mediation, and

of the authority of representatives chosen by their employees. Report of House Committee on Interstate and Foreign Commerce, No. 1944, 73rd Cong., 2d Sess., pp. 1-2.<sup>5</sup> Section 2, Ninth, of the amended Act, was specifically aimed at this practice. It provided a means for ascertaining who are the authorized representatives of the employees through intervention and certification by the Mediation Board, and commanded the carrier to treat with the representative so certified. That the command was limited in its application to the case of intervention

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about 25% of these were withdrawn by the parties. Yet, during the same period, more than 600 direct and voluntary settlements were negotiated. See United States Board of Mediation, First Annual Report, For the Fiscal Year Ended June 30, 1927, pp. 10-11; Second Annual Report, For the Fiscal Year Ended June 30, 1928, pp. 11, 58-59. Compare National Mediation Board, Second Annual Report, For the Fiscal Year Ended June 30, 1936, at p. 1: "For every dispute submitted to . . . these Boards, there were many others considered and settled in conferences between representatives of carriers and of the employees as required by section 2, second, of the Act."

See also testimony of William M. Leiserson, Chairman of the National Mediation Board until February 1, 1937, at Hearing by National Labor Relations Board in the case of Jones & Laughlin Steel Corporation, 301 U. S. 1: "If we have a threat of a strike now [on the railroads] it might be on a big fundamental question, like wages and hours, and we usually find we can settle those by arbitration or otherwise. . . . But if the issues involved were discrimination or discharge of men because they had joined the organization, or the question would be the right of the organization to represent them, we could not have settled those strikes." See Governmental Protection of Labor's Right to Organize, National Labor Relations Board, Division of Economic Research, Bull. No. 1, August, 1936, pp. 17-18.

<sup>5</sup> See also statement by Representative Crosser, in charge of the bill on the floor, in Hearings, House Committee on Rules, 73d Cong., 2d Sess., on H. R. 9861, pp. 10-11, 13: "The purpose of the bill is . . . [*inter alia*] to outlaw the attempt that has been made in numerous instances by employers who control alleged labor unions, and thereby, to use a slang phrase, to 'gum up the works'. . . . We have had 8



and certification by the Mediation Board indicates not that its words are precatory, but only that Congress hit at the evil "where experience shows it to be most felt." *Keokee Coke Co. v. Taylor*, 234 U. S. 224, 227.

Petitioner argues that the phrase "treat with" must be taken as meaning "regard" or "act towards," so that compliance with its mandate requires the employer to meet the authorized representative of the employees only if and when he shall elect to negotiate with them. This suggestion disregards the words of the section, and ignores the plain purpose made manifest throughout the numerous provisions of the Act. Its major objective is the avoidance of industrial strife, by conference between the authorized representatives of employer and employee. The command to the employer to "treat with" the authorized representative of the employees adds nothing to the 1926 Act, unless it requires some affirmative act on the part of the employer. Compare the *Railway Clerks* case, *supra*. As we cannot assume that its addition to the statute was purposeless, we must take its meaning to be that which the words suggest, which alone would add something to the statute as

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years of operation of this act, and we have prevented any strikes. But strikes have been threatened because of the defects which have been found in this bill."

Under the 1926 Act disputes over the designation of employee representatives could be dealt with by the old United States Mediation Board only by agreement of the parties. The carriers agreed to an election conducted by the Board but nine times in six years, see testimony of William M. Leiserson, Chairman of the National Mediation Board until February 1, 1937, at Hearing by National Labor Relations Board in the case of Jones & Laughlin Steel Corp., 301 U. S. 1; Governmental Protection of Labor's Right to Organize, National Labor Relations Board, Division of Economic Research, Bull. No. 1, August, 1936, p. 50. The 1934 amendment was followed by a large increase in the number of representation disputes submitted to the National Mediation Board. See *infra*, Note 7.

it was before amendment, and which alone would tend to effect the purpose of the legislation. The statute does not undertake to compel agreement between the employer and employees, but it does command those preliminary steps without which no agreement can be reached. It at least requires the employer to meet and confer with the authorized representative of its employees, to listen to their complaints, to make reasonable effort to compose differences—in short, to enter into a negotiation for the settlement of labor disputes such as is contemplated by § 2, First.

Petitioner's insistence that the statute does not warrant so much of the decree as forbids it to enter into contracts of employment with its individual employees is based upon a misconstruction of the decree. Both the statute and the decree are aimed at securing settlement of labor disputes by inducing collective bargaining with the true representative of the employees and by preventing such bargaining with any who do not represent them. The obligation imposed on the employer by § 2, Ninth, to treat with the true representative of the employees as designated by the Mediation Board, when read in the light of the declared purposes of the Act, and of the provisions of § 2, Third and Fourth, giving to the employees the right to organize and bargain collectively through the representative of their own selection, is exclusive. It imposes the affirmative duty to treat only with the true representative, and hence the negative duty to treat with no other. We think, as the Government concedes in its brief,<sup>6</sup> that

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<sup>6</sup> (Note 35a.) "The Government interprets the negative obligations imposed by the statute and decree as having the following effect:

"When the majority of a craft or class has (either by secret ballot or otherwise) selected a representative, the carrier cannot make with anyone other than the representative a collective contract (i. e., a contract which sets rates of pay, rules, or working conditions),

the injunction against petitioner's entering into any contract concerning rules, rates of pay and working conditions, except with respondent, is designed only to prevent collective bargaining with anyone purporting to represent employees, other than respondent, who has been ascertained to be their true representative. When read in its context it must be taken to prohibit the negotiation of labor contracts, generally applicable to employees in the mechanical department, with any representative other than respondent, but not as precluding such individual contracts as petitioner may elect to make directly with individual employees. The decree, thus construed, conforms, in both its affirmative and negative aspects, to the requirements of § 2.

*Propriety of Relief in Equity.* Petitioner contends that if the statute is interpreted as requiring the employer to negotiate with the representative of his employees, its obligation is not the appropriate subject of a decree in equity; that negotiation depends on desires and mental attitudes which are beyond judicial control, and that since equity cannot compel the parties to agree, it will not

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whether the contract covers the class as a whole or a part thereof. Neither the statute nor the decree prevents the carrier from refusing to make a collective contract and hiring individuals on whatever terms the carrier may by unilateral action determine. In hirings of that sort the individual does not deal in a representative capacity with the carrier and the hiring does not set general rates of pay, rules, or working conditions. Of course, as a matter of voluntary action, not as a result of the statute or the decree, the carrier may contract with the duly designated representative to hire individuals only on the terms of a collective understanding between the carrier and the representative; but any such agreement would be entirely voluntary on the carrier's part and would in no sense be compelled.

"If the majority of a craft or class has not selected a representative, the carrier is free to make with anyone it pleases and for any group it pleases contracts establishing rates of pay, rules, or working conditions."

compel them to take the preliminary steps which may result in agreement.

There is no want of capacity in the court to direct complete performance of the entire obligation: both the negative duties not to maintain a company union and not to negotiate with any representative of the employees other than respondent and the affirmative duty to treat with respondent. Full performance of both is commanded by the decree in terms which leave in no uncertainty the requisites of performance. In compelling compliance with either duty it does far less than has been done in compelling the discharge of a contractual or statutory obligation calling for a construction or engineering enterprise, *New Orleans, M. & T. Ry. Co. v. Mississippi*, 112 U. S. 12; *Wheeling Traction Co. v. Board of Commissioners*, 248 Fed. 205; see *Gas Securities Co. v. Antero & Lost Park Reservoir Co.*, 259 Fed. 423, 433; *Board of Commissioners v. A. V. Wills & Sons*, 236 Fed. 362, 380; *Jones v. Parker*, 163 Mass. 564; 40 N. E. 1044, or in granting specific performance of a contract for the joint use of a railroad bridge and terminals, *Joy v. St. Louis*, 138 U. S. 1; *Union Pacific Ry. Co. v. Chicago, R. I. & P. Ry. Co.*, 163 U. S. 564; cf. *Prospect Park & Coney Island R. Co. v. Coney Island & Brooklyn R. Co.*, 144 N. Y. 152; 39 N. E. 17. Whether an obligation has been discharged, and whether action taken or omitted is in good faith or reasonable, are everyday subjects of inquiry by courts in framing and enforcing their decrees.

It is true that a court of equity may refuse to give any relief when it is apparent that that which it can give will not be effective or of benefit to the plaintiff. Equity will not decree the execution of a partnership agreement since it cannot compel the parties to remain partners, see *Hyer v. Richmond Traction Co.*, 168 U. S. 471, 482, or compel one to enter into performance of a contract of personal service which it cannot adequately control, *Marble Com-*

*pany v. Ripley*, 10 Wall. 339, 358; *Karrick v. Hannaman*, 168 U. S. 328, 336; *Tobey v. Bristol*, Fed. Cas. No. 14,065; *Weeks v. Pratt*, 43 F. (2d) 53, 57; Railway Labor Act, § 2, Tenth. But the extent to which equity will go to give relief where there is no adequate remedy at law is not a matter of fixed rule. It rests rather in the sound discretion of the court. *Willard v. Tayloe*, 8 Wall. 557, 565; *Joy v. St. Louis*, *supra*, 47; *Morrison v. Work*, 266 U. S. 481, 490; *Curran v. Holyoke Water Power Co.*, 116 Mass. 90, 92. Whether the decree will prove so useless as to lead a court to refuse to give it, is a matter of judgment to be exercised with reference to the special circumstances of each case rather than to general rules which at most are but guides to the exercise of discretion. It is a familiar rule that a court may exercise its equity powers, or equivalent mandamus powers, *United States ex rel. Greathouse v. Dern*, 289 U. S. 352, 359, to compel courts, boards, or officers to act in a matter with respect to which they may have jurisdiction or authority, although the court will not assume to control or guide the exercise of their authority. *Interstate Commerce Comm'n v. Humboldt S. S. Co.*, 224 U. S. 474; *Louisville Cement Co. v. Interstate Commerce Comm'n*, 246 U. S. 638; see *Work v. United States ex rel. Rives*, 267 U. S. 175, 184; *Wilbur v. United States ex rel. Kadrie*, 281 U. S. 206, 218.

In considering the propriety of the equitable relief granted here, we cannot ignore the judgment of Congress, deliberately expressed in legislation, that where the obstruction of the company union is removed, the meeting of employers and employees at the conference table is a powerful aid to industrial peace. Moreover, the resources of the Railway Labor Act are not exhausted if negotiation fails in the first instance to result in agreement. If disputes concerning changes in rates of pay, rules or working conditions, are "not adjusted by the parties in conference," either party may invoke the mediation services of the

Mediation Board, § 5, First, or the parties may agree to seek the benefits of the arbitration provision of § 7. With the coercive influence of the company union ended, and in view of the interest of both parties in avoiding a strike, we cannot assume that negotiation, as required by the decree, will not result in agreement, or lead to successful mediation or arbitration, or that the attempt to secure one or another through the relief which the district court gave is not worth the effort.

More is involved than the settlement of a private controversy without appreciable consequences to the public. The peaceable settlement of labor controversies, especially where they may seriously impair the ability of an interstate rail carrier to perform its service to the public, is a matter of public concern. That is testified to by the history of the legislation now before us, the reports of committees of Congress having the proposed legislation in charge, and by our common knowledge. Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved. *Pennsylvania v. Williams*, 294 U. S. 176, 185; *Central Kentucky Gas Co. v. Railroad Commission*, 290 U. S. 264, 270-273; *Harrisonville v. W. S. Dickey Clay Co.*, 289 U. S. 334, 338; *Beasley v. Texas & Pacific Ry. Co.*, 191 U. S. 492, 497; *Joy v. St. Louis*, *supra*, 47; *Texas & Pacific Ry. Co. v. Marshall*, 136 U. S. 393, 405-406; *Conger v. New York, W. S. & B. R. Co.*, 120 N. Y. 29, 32, 33; 23 N. E. 983. The fact that Congress has indicated its purpose to make negotiation obligatory is in itself a declaration of public interest and policy which should be persuasive in inducing courts to give relief. It is for similar reasons that courts, which traditionally have refused to compel performance of a contract to submit to arbitration, *Tobey v. Bristol*, *supra*, enforce statutes commanding performance of arbitration agreements. *Red Cross*

*Line v. Atlantic Fruit Co.*, 264 U. S. 109, 119, 121; *Marine Transit Corp. v. Dreyfus*, 284 U. S. 263, 278.

The decree is authorized by the statute and was granted in an appropriate exercise of the equity powers of the court.

*Second. Constitutionality of § 2 of the Railway Labor Act. (A) Validity Under the Commerce Clause.* The power of Congress over interstate commerce extends to such regulations of the relations of rail carriers to their employees as are reasonably calculated to prevent the interruption of interstate commerce by strikes and their attendant disorders. *Wilson v. New*, 243 U. S. 332, 347-348. The Railway Labor Act, § 2, declares that its purposes, among others, are "To avoid any interruption to commerce or to the operation of any carrier engaged therein," and "to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules or working conditions." The provisions of the Act and its history, to which reference has been made, establish that such are its purposes, and that the latter is in aid of the former. What has been said indicates clearly that its provisions are aimed at the settlement of industrial disputes by the promotion of collective bargaining between employers and the authorized representative of their employees, and by mediation and arbitration when such bargaining does not result in agreement. It was for Congress to make the choice of the means by which its objective of securing the uninterrupted service of interstate railroads was to be secured, and its judgment, supported as it is by our long experience with industrial disputes, and the history of railroad labor relations, to which we have referred, is not open to review here.<sup>7</sup> The means chosen are appro-

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<sup>7</sup>There was evidence available to Congress that the labor policy embodied in the Railway Labor Act had been successful in curbing strikes. In the eight years subsequent to the passage of the 1926 Act, there were only two small railroad strikes. Since the 1934

priate to the end sought and hence are within the congressional power. See *Railway Clerks* case, *supra*, 570; *Railroad Retirement Board v. Alton R. Co.*, 295 U. S. 330, 369.

But petitioner insists that the Act as applied to its "back shop" employees is not within the commerce power since their duties have no direct relationship to interstate transportation. Of the 824 employees in the six shop crafts eligible to vote for a choice of representatives, 322 work in petitioner's "back shops" at Princeton, West Virginia. They are there engaged in making classified repairs, which consist of heavy repairs

amendment, there has been but one. See National Mediation Board, First Annual Report, For the Fiscal Year Ended June 30, 1935, p. 8; Second Annual Report, For the Fiscal Year Ended June 30, 1936, p. 1.

In the water transportation and motor transportation fields, there were frequent strikes. A table submitted by the United States [see Respondent's Brief, *Associated Press v. National Labor Relations Board*, No. 365, October Term 1936, p. 57], and derived from United States Department of Labor, Bureau of Labor Statistics, Bulletins No. R 339 (1936), p. 4; No. R. 389 (1936), p. 4; Monthly Labor Review (May-September, 1936), Monthly "Analysis of Strikes," shows the following:

	Man-days of idleness due to labor strikes—			
	1933	1934	1935	(1936 Jan.-May)
Water Transportation.....	32, 752	1, 068, 867	749, 534	119, 820
Motor Transportation.....	155, 565	859, 657	202, 393	46, 054
Railroads.....	0	0	56	0

Yet there were many disputes between rail carriers and their employees. Apart from the more trivial grievances and differences of opinion in the interpretation of agreements, 876 disputes, principally over changes in rates of pay, rules or working conditions were referred to the United States Board of Mediation between 1926 and 1934. The following table, derived from its Eighth Annual Report, For the Fiscal Year Ended June 30, 1934, pp. 4-5, indicates the suc-



on locomotives and cars withdrawn from service for that purpose for long periods (an average of 105 days for locomotives and 109 days for cars). The repair work is

cess of the mediation and arbitration machinery set up by the Railway Labor Act.

Manner of Disposition	Fiscal Year Ending June 30, --								
	1927	1928	1929	1930	1931	1932	1933	1934	Total
Mediation Agreements.....	57	84	46	25	24	45	23	17	321
Withdrawn by Parties.....	24	45	43	20	21	69	20	26	268
Arbitration Agreements.....	27	14	10	4	2	4	3	9	73
Closed Account:									
Refusal to Arbitrate.....	0	0	9	3	1	47	39	50	149
Retired or closed, other causes..	3	2	21	10	5	5	10	9	65

But statistics show that many more labor disputes were settled by direct negotiation, *supra*, footnote 4, and Congress might reasonably have feared that the action of certain railroads in negotiating only with unions dominated by them would prevent such settlements and lead to strikes. See *supra*, footnote 5. That there were many disputes, apparent and latent, for which the 1926 Act had not provided adequate machinery, is shown by the large number of representation disputes (more than 230) referred to the National Mediation Board in the first two years of its existence, see First Annual Report, For the Fiscal Year Ended June 30, 1935, p. 9; Second Annual Report, For the Fiscal Year Ended June 30, 1936, pp. 5, 7.

It is the belief of the National Mediation Board that peace in the railroad industry is largely due to the 3,485 collective agreements covering rates of pay, rules and working conditions, which were filed by June 30, 1936 [see National Mediation Board, Second Annual Report, For the Fiscal Year Ended June 30, 1936, p. 26]. In its First Annual Report, For the Fiscal Year Ended June 30, 1935, it concluded (p. 36): "The absence of strikes in the railroad industry, particularly during the last two years when wide-spread strikes, the usual accompaniment of business recovery, prevailed throughout the country, is to be explained primarily not by the mediation machinery of the Railway Labor Act, but by the existence of these collective labor contracts. For, while they are in existence, these contracts provide orderly, legal processes of settling all disputes as a substitute for strikes and industrial warfare."

upon the equipment used by petitioner in its transportation service, 97% of which is interstate. At times a continuous stream of engines and cars passes through the "back shops" for such repairs. When not engaged in repair work, the back shop employees perform "store order work," the manufacture of material such as rivets and repair parts, to be placed in railroad stores for use at the Princeton shop and other points on the line.

The activities in which these employees are engaged have such a relation to the other confessedly interstate activities of the petitioner that they are to be regarded as a part of them. All taken together fall within the power of Congress over interstate commerce. *Baltimore & Ohio R. Co. v. Interstate Commerce Comm'n*, 221 U. S. 612, 619; cf. *Pedersen v. Delaware, L. & W. R. Co.*, 229 U. S. 146, 151. Both courts below have found that interruption by strikes of the back shop employees, if more than temporary, would seriously cripple petitioner's interstate transportation. The relation of the back shop to transportation is such that a strike of petitioner's employees there, quite apart from the likelihood of its spreading to the operating department, would subject petitioner to the danger, substantial, though possibly indefinable in its extent, of interruption of the transportation service. The cause is not remote from the effect. The relation between them is not tenuous. The effect on commerce cannot be regarded as negligible. See *United States v. Railway Employees' Department of the American Federation of Labor*, 290 Fed. 978, 981, holding participation of back shop employees in the nation-wide railroad shopmen's strike of 1922 to constitute an interference with interstate commerce. As the regulation here in question is shown to be an appropriate means of avoiding that danger, it is within the power of Congress.

It is no answer, as petitioner suggests, that it could close its back shops and turn over the repair work to independent contractors. Whether the railroad should do its repair work in its own shops, or in those of another, is a question of railroad management. It is petitioner's determination to make its own repairs which has brought its relations with shop employees within the purview of the Railway Labor Act. It is the nature of the work done and its relation to interstate transportation which afford adequate basis for the exercise of the regulatory power of Congress.

The *Employers' Liability Cases*, 207 U. S. 463, 498, which mentioned railroad repair shops as a subject beyond the power to regulate commerce, are not controlling here. Whatever else may be said of that pronouncement, it is obvious that the commerce power is as much dependent upon the type of regulation as its subject matter. It is enough for present purposes that experience has shown that the failure to settle, by peaceful means, the grievances of railroad employees with respect to rates of pay, rules or working conditions, is far more likely to hinder interstate commerce than the failure to compensate workers who have suffered injury in the course of their employment.

(B) *Validity of § 2 of the Railway Labor Act Under the Fifth Amendment.* The provisions of the Railway Labor Act applied in this case, as construed by the court below, and as we construe them, do not require petitioner to enter into any agreement with its employees, and they do not prohibit its entering into such contract of employment as it chooses, with its individual employees. They prohibit only such use of the company union as, despite the objections repeated here, was enjoined in the *Railway Clerks* case, *supra*, and they impose on petitioner only the affirmative duty of "treating with" the authorized representatives of its employees for the purpose of negotiating a labor dispute.

Even though Congress, in the choice of means to effect a permissible regulation of commerce, must conform to due process, *Railroad Retirement Board v. Alton R. Co.*, *supra*, 347; *Chicago, R. I. & P. Ry. Co. v. United States*, 284 U. S. 80, 97; see *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555, 589, it is evident that where, as here, the means chosen are appropriate to the permissible end, there is little scope for the operation of the due process clause. The railroad can complain only of the infringement of its own constitutional immunity, not that of its employees. *Erie R. Co. v. Williams*, 233 U. S. 685, 697; *Jeffrey Mfg. Co. v. Blagg*, 235 U. S. 571, 576; *Rail & River Coal Co. v. Yaple*, 236 U. S. 338, 349; cf. *Hawkins v. Bleakly*, 243 U. S. 210, 214. And the Fifth Amendment, like the Fourteenth, see *West Coast Hotel Co. v. Parrish*, decided this day, *ante*, p. 379, is not a guarantee of untrammelled freedom of action and of contract. In the exercise of its power to regulate commerce, Congress can subject both to restraints not shown to be unreasonable. Such are the restraints of the safety appliance act, *Johnson v. Southern Pacific Co.*, 196 U. S. 1; of the act imposing a wage scale on rail carriers, *Wilson v. New*, *supra*; of the Railroad Employers' Liability Act, *Second Employers' Liability Cases*, 223 U. S. 1; of the act fixing maximum hours of service for railroad employees whose duties control or affect the movement of trains, *Baltimore & Ohio R. Co. v. Interstate Commerce Comm'n*, *supra*; of the act prohibiting the prepayment of seamen's wages, *Patterson v. Bark Eudora*, 190 U. S. 169.

Each of the limited duties imposed upon petitioner by the statute and the decree do not differ in their purpose and nature from those imposed under the earlier statute and enforced in the *Railway Clerks* case, *supra*. The quality of the action compelled, is reasonableness, and therefore the lawfulness of the compulsion, must be

judged in the light of the conditions which have occasioned the exercise of governmental power. If the compulsory settlement of some differences, by arbitration, may be within the limits of due process, see *Hardware Dealers Mutual Fire Ins. Co. v. Glidden Co.*, 284 U. S. 151, it seems plain that the command of the statute to negotiate for the settlement of labor disputes, given in the appropriate exercise of the commerce power, cannot be said to be so arbitrary or unreasonable as to infringe due process.

*Adair v. United States*, 208 U. S. 161, and *Coppage v. Kansas*, 236 U. S. 1, have no present application. The provisions of the Railway Labor Act invoked here neither compel the employer to enter into any agreement, nor preclude it from entering into any contract with individual employees. They do not "interfere with the normal exercise of the right of the carrier to select its employees or to discharge them." See the *Railway Clerks* case, *supra*, 571.

There remains to be considered petitioner's contentions that the certificate of the National Mediation Board is invalid and that the injunction granted is prohibited by the provisions of the Norris-LaGuardia Act, of March 23, 1932, c. 90, 47 Stat. 70; 29 U. S. C. §§ 101-115.

*Validity of the Certificate of the National Mediation Board.* In each craft of petitioner's mechanical department a majority of those voting cast ballots for the Federation. In the case of the blacksmiths the Federation failed to receive a majority of the ballots of those eligible to vote, although a majority of the craft participated in the election. In the case of the carmen and coach cleaners, a majority of the employees eligible to vote did not participate in the election. There has been no appeal from the ruling of the district court that the designation of the Federation as the representative of the carmen and coach cleaners was invalid. Petitioner as-

sails the certification of the Federation as the representative of the blacksmiths because less than a majority of that craft, although a majority of those voting, voted for the Federation.

Section 2, Fourth, of the Railway Labor Act provides: "The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act." Petitioner construes this section as requiring that a representative be selected by the votes of a majority of eligible voters. It is to be noted that the words of the section confer the right of determination upon a majority of those eligible to vote, but is silent as to the manner in which that right shall be exercised. Election laws providing for approval of a proposal by a specified majority of an electorate have been generally construed as requiring only the consent of the specified majority of those participating in the election. *Carroll County v. Smith*, 111 U. S. 556; *Douglass v. Pike County*, 101 U. S. 677; *Louisville & Nashville R. Co. v. County Court of Davidson County*, 1 Sneed (Tenn.) 637; *Montgomery County Fiscal Court v. Trimble*, 104 Ky. 629; 47 S. W. 773. Those who do not participate "are presumed to assent to the expressed will of the majority of those voting." *Cass County v. Johnston*, 95 U. S. 360, 369, and see *Carroll County v. Smith*, *supra*.

We see no reason for supposing that § 2, Fourth, was intended to adopt a different rule. If, in addition to participation by a majority of a craft, a vote of the majority of those eligible is necessary for a choice, an indifferent minority could prevent the resolution of a contest, and thwart the purpose of the Act, which is dependent for its operation upon the selection of representatives. There is the added danger that the absence of eligible voters may be due less to their indifference than to coercion by the employer. The opinion of the trial court discloses that the

Mediation Board scheduled an election to be determined by a majority of the eligible voters, but that the Federation's subsequent protest that the Railway was influencing the men not to vote caused the Board to hold a new election to be decided by the ballots of a majority of those voting.

It is significant of the congressional intent that the language of § 2, Fourth, was taken from a rule announced by the United States Railroad Labor Board, acting under the labor provisions of the Transportation Act of 1920, Decision No. 119, *International Association of Machinists v. Atchison, T. & S. F. Ry.*, 2 Dec. U. S. Railroad Labor Board, 87, 96, par. 15. Prior to the adoption of the Railway Labor Act, this rule was interpreted by the Board, in Decision No. 1971, *Brotherhood of Railway & S. S. Clerks v. Southern Pacific Lines*, 4 Dec. U. S. Railroad Labor Board 625, where it appeared that a majority of the craft participated in the election. The Board ruled, p. 639, that a majority of the votes cast was sufficient to designate a representative. A like interpretation of § 2, Fourth, was sustained in *Association of Clerical Employees v. Brotherhood of Railway & S. S. Clerks*, 85 F. (2d) 152.

The petitioner also challenges the validity of the certificate of the National Mediation Board in this case because it fails to state the number of eligible voters in each craft or class. The certificate states that respondent "has been duly designated and authorized to represent the mechanical department employees" of petitioner. It also shows on its face the total number of votes cast in each craft in favor of each candidate, but omits to state the total number of eligible voters in each craft. Petitioner insists that this is a fatal defect in the certificate, upon the basis of those cases which hold that where a finding of fact of an administrative officer or tribunal is prerequisite to the making of a rule or order, the finding must be explicitly

set out. See *Panama Refining Co. v. Ryan*, 293 U. S. 388; *United States v. Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499; *Atchison, T. & S. F. Ry. Co. v. United States*, 295 U. S. 193.

The practice contended for is undoubtedly desirable, but it is not required by the present statute or by the authorities upon which petitioner relies. The National Mediation Board makes no order. The command which the decree of the court enforces is that of the statute, not of the Board. Its certificate that the Federation is the authorized representative of the employees is the ultimate finding of fact prerequisite to enforcement by the courts of the command of the statute. There is no contention that this finding is conclusive in the absence of a finding of the basic facts on which it rests—that is to say, the number of eligible voters, the number participating in the election and the choice of the majority of those who participate. Whether the certification, if made as to those facts, is conclusive, it is unnecessary now to determine. But we think it plain that if the Board omits to certify any of them, the omitted fact is open to inquiry by the court asked to enforce the command of the statute. See *Dismuke v. United States*, 297 U. S. 167, 171–173. Such inquiry was made by the trial court, which found the number of eligible voters and thus established the correctness of the Board's ultimate conclusion. The certificate, which conformed to the statutory requirement, was *prima facie* sufficient, and was not shown to be invalid for want of the requisite supporting facts.

*Validity of the Injunction Under the Norris-LaGuardia Act.* Petitioner assails the decree for its failure to conform to the requirements of § 9 of the Norris-LaGuardia Act, which provides: “every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act



or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in . . . findings of fact made and filed by the court." The evident purpose of this section, as its history and context show, was not to preclude mandatory injunctions, but to forbid blanket injunctions against labor unions, which are usually prohibitory in form, and to confine the injunction to the particular acts complained of and found by the court. We deem it unnecessary to comment on other similar objections, except to say that they are based on strained and unnatural constructions of the words of the Norris-LaGuardia Act, and conflict with its declared purpose, § 2, that the employee "shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of § 2, Ninth, of the Railway Labor Act, authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act. See the *Railway Clerks* case, *supra*, 571; cf. *Callahan v. United States*, 285 U. S. 515, 518; *Walla Walla v. Walla Walla Water Co.*, 172 U. S. 1, 22; *International Alliance v. Rex Theatre Corp.*, 73 F. (2d) 92, 93.

*Affirmed.*